

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

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11/01/2021

C.P. (I.B) No.206/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 01.01.2021

Name of the Company: Bank of Baroda
V/s
Heavy Metal & Tubes Ltd

Section 7 of the Insolvency and Bankruptcy Code,
2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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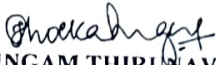
- 1.
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ORDER

(Through Video Conferencing)

Advocate, Mr. D.K. Nokrani is present on behalf of the petitioner and Advocate, Mr. Arjun Sheth is present on behalf of the respondent.

The order is pronounced in the open court, vide separate sheet.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)


MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 1st January 2021



BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

C.P.(IB) No. 206/NCLT/AHM/2019

In the matter of:

BANK OF BARODA

(Erstwhile DENA BANK merged with BOB)

Registered Office at:

Dena Corporate Centre,
C-10, G-Block, Bandra Kurla Complex,
Bandra(East), Mumbai-400 051

Branch Office at:

Ashram Road Branch,
Dena Laxmi Bhavan, Ground Floor,
Ashram Road, Navrangpura,
Ahmedabad- 380 009.

....Petitioner
(Financial Creditor)

Versus

M/s. Heavy Metal & Tubes Ltd.

Registered Office at:

201, Ashwarath Complex, Ushmanpura,
Ashram Road, Ahmedabad-380013

.... Respondent
(Corporate Debtor)

Order delivered on 01.01.2021.

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Advocate, Mr. D.K. Nakrani appeared for the Petitioner.
Advocate, Mr. Arjun Sheth, appeared for the Respondent.

ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member (T)]

1. Shri. Amol Deshpande, Chief Manager of Bank of Baroda (Erstwhile Dena Bank merged with the BOB), on behalf of the Petitioner/Financial Creditor has filed this Petition under Section 7



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of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the IB Code"] read with Rule 4 of the Insolvency and Bankruptcy Application to Adjudicating Authority Rules, 2016 (hereinafter referred to as "the Rules") for the purpose of initiating corporate insolvency resolution process [hereinafter referred to as "CIRP") against M/s. Heavy Metal & Tubes Ltd, the Respondent company/Corporate Debtor.

2. M/s. Heavy Metal & Tubes Ltd, the Respondent company, incorporated on 17.10.1990, under the provisions of the Companies Act, 1956 having its Registered Office at 201, Ashwarath Complex, Ushmanpura, Ashram Road, Ahmedabad-380013.
3. The Company is engaged in the business of manufacture, ferrous, non-ferrous, iron and steel, stainless steel, carbon steel and alloy steel pipes and tubes, fitting for industrial, chemical, petrochemical, fertilizer, distilleries, dairy, food, processing, power generation, textiles, paper, refinery, metals and malleable grey, casting, steel forging, plate makers, wire drawers, galvanizers, re-rollers, and to buy, take on lease or hire, sell, import, export, process, convert, repair and otherwise to deal in such products, raw materials, stores, packing materials of all kinds and branches of the same.
4. The Authorised Share Capital of the Respondent Company, is Rs.69,50,00,000/-. (Rupees Sixty Nine Crores Fifty Lakhs) divided into Rs. 6,95,00,000/- Equity Shares of Rs. 10/- each. The Paid-Up Share Capital of the Respondent Company is Rs. 58,81,01,000/- divided into Rs. 5,88,10,100/- equity shares of Rs. 10/- each. The Respondent is having its CIN: U25200GJ1990PLC014554.
5. As per Part IV of the application, the amount of debt sanctioned by Bank of Baroda (Erstwhile Dena Bank), the Financial Creditor in the form of cash credit of Rs. 900 lakhs on 08.11.2011, Corporate Loan of Rs. 400 lakhs and LC limit of Rs. 700 lakhs on 20.03.2013. It is submitted that credit facilities are renewed on 11.07.2014 and on 27.04.2017. It is further stated that the total amount of default as

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on 31.07.2018 amounted to Rs. 20,89,13,530.0/- (Rupees Twenty Crores Eighty-Nine Lakhs Thirteen Thousand Five Hundred Thirty and paise two only) including interest till 31.12.2018 plus further interest till date of payment which is admittedly owes to Corporate Debtor. The date of default is 31.07.2018.

6. It is submitted by the Petitioner that due to merger of Dena Bank with Bank of Baroda, the Petitioner filed an IA no. 450 of 2019 for substitution of Dena Bank with Bank of Baroda and the Hon'ble Tribunal has allowed the said application. Thereafter, one IA no. 686 of 2019 was filed for draft amendment by the Petitioner, which was also allowed.
7. It is stated by the Petitioner Bank that aforesaid Credit Facilities were secured by Equitable mortgage of immovable property and the hypothecation of Movable Assets and Current Assets of the Corporate Debtor and attached the copy of documents in support of the same.
8. The Petitioner submitted the following documents in support of his claim against the Corporate Debtor.
 - Bank Account Statements.
 - Record of default report from Information Utility.
 - Copies of loan sanction Letter dated Sanction Letters dated 08/11/2011, 20/03/2013, 11/07/2014, 18/03/2015 & 24/04/2017.
 - Copies of Agreement of Hypothecation from Company dated 21/11/2011 & supplemental join deed of Hypothecation dated 30/03/2013.
 - Copies of letter of General Lien and set off for borrowing arrangements from the borrower dated 21/11/2011 & Guarantors dated 21/11/2011
 - Copies of undertaking dated 21/11/2011, 21/11/2011 & General Undertaking dated 21/11/2011, executed by M/s. Heavy Metal & Tubes Ltd. and undertaking dated 21/11/2011 and 22/11/2011.



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- Copy of Letter of Confirmation of Guarantee by Guarantor dated 22/11/2011.
 - Copy of Letter of Guarantee (from individual/ partners) dated 22/11/2011 & 21/11/2011.
 - Copy of declaration in respect of pending court cases of banks and financial institutions dated 22/11/2011 and affidavit dated 22/11/2011.
 - Supplemental Agreement dated 22/11/2011.
 - Copy of Declaration of undertaking dated 03/04/2013.
 - Copy of Declaration dated 29/06/2012.
 - Copy of Mortgage deed dated 29/06/2021 & 05/04/2013.
 - Copy of Deed of Pledge dated 30/03/2013.
 - Copy of Demand Promissory Note (from Limited Company) dated 21/11/2011.
 - Copy of Letter of Continuity dated 21/11/2011.
 - Copy of Letter of Authority to be given by Member Bank to Lead Bank dated 30/03/2013.
 - Copy of Supplemental Deed of Guarantee dated 30/03/2013.
 - Copy of Supplemental Agreement dated 21/11/2011, 30/03/2013.
 - Copy of Supplemental Inter se Agreement among SBI, IDBI Bank Ltd. and Dena Bank consortium dated 30/03/2013.
 - Copy of ROC Search Report.
 - Copy of Resolution dated 17/11/2011.
 - Copy of CIBIL Report dated 19/02/2019.
 - Statement of Account under the Bankers' Books Evidence Act.
9. It is submitted by the Petitioner that Respondent Company is having the consortium credit facilities from three Banks namely SBI, Dena Bank now BOB and IDBI Bank Ltd. All three Banks have executed the Security Trustee Agreement in favour of SBICAP Trustee Company Ltd. It is further submitted that the Respondent Company has executed the several separate security documents including equitable mortgage, hypothecation of movable properties etc. in favour of the SBICAP Trustee Company Ltd.
10. It is submitted by the Petitioner that Respondent Company has failed to honour the terms and conditions of the credit facilities granted by the Petitioner's Bank and hence, the Petitioner's Bank has classified the



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account of the Respondent Company as Non-Performing Asset (NPA) on 31.07.2018.

11. It is submitted by Petitioner that pursuant to the said default, the Applicant Bank issued a Notice under Section 13(2) and 13(13) of the SARFAESI Act on 10.01.2019 demanding the outstanding amount of Rs. 20,89,13,530.2/-.
12. The Respondent prayed for the dismissal of the application stating that the present application is not maintainable as it is filed by Shri Amol Deshpande without authority. The date of default mentioned is wrong and the application is filed pre maturely before the default is taking place. It is also stated that the default is mentioned as 31.07.2018, which is the date of classification of an account as NPA which can never be the date of default. The Applicant has issued the notice of demand under SURFAESI Act on 10.01.2019 demanding payment within 60 days. Thus, 60 days from the date of demand i.e. 11.03.2019 is the date of default. The petition is filed on 01.03.2019, hence the petition is pre-mature. In addition, the Respondent has raised various technical objections.
13. The Petitioner has filed further affidavit on 28.10.2020 enclosing Circular no. 158/09/201879 dated 12.09.2018 issued by the bank authorization chief managers and above to initiate the action under IBC vide Board Resolution dated 07.09.2018. Hence, the objection of the Respondent is not sustainable.
14. In the rebuttal affidavit filed by the Petitioner, it is stated that as per the guidelines of the RBI, the account of the borrower not paying three consecutive of loan amount within 90 days that default occur and it will be classified as NPA. The action under SURFAESI is a separate action initiated by the Petitioner on occurrence of default and hence the Petitioner cannot claim the default which is on 11.03.2019. In addition to that, the default is still continuing. Hence, the objection of the Respondent is not sustainable.



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15. For the technical objections raised by the Respondent, the Petitioner has filed rebuttal documents and also highlighted various averments made in the applications and the documents enclosed along with the application. Gone through the application, the reply affidavit filed by the Respondent and the rebuttal documents and further affidavits filed by the Petitioner. Based on this, the technical objections raised by the Respondent are not sustainable.
16. Gone through the application filed and documents submitted by the Petitioner Bank. As per Section 7 of IBC, in an application preferred by the Financial Creditor for initiation of Corporate Insolvency Resolution Process, the Adjudicating Authority is required to see the existence of financial debt and ascertain the existence of default. As per the documents submitted by the Petitioner that there is a financial debt in the form of loans availed by the Corporate Debtor. The date of default is on 31.07.2018. The Corporate Debtor continuously transacting in the loan account and the last date of receipt in the loan account is on 26.03.2018. The application is filed on 05.03.2019, hence the application is filed within the period of limitation. The application is filed by Shri Amol Deshpande, Chief Manager of the Petitioner's Bank with authorization papers.
17. The Petitioner has proposed the name of Mr. Trupalkumar J. Patel having Registration No. IBBI/IPA-001/IP-P01186/2018-19/11907 to act as IRP under Section 13(1)(b) of the IB Code and written communication in Form-2 of IBBI has been submitted by the proposed IRP.
18. From the documents placed on record, this Adjudicating Authority is satisfied that default has been committed by the Corporate Debtor in repayment of loan amount to the Bank. The petition is complete. As a consequence, the instant petition is admitted in terms of Section 7 of the IB Code and the moratorium as envisaged under the provisions of Section 14(1) of IB Code and extracted hereunder shall follow in relation to the Respondent Corporate Debtor.



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(1) Subject to provisions of sub-Section (2) and (3), on the Insolvency Commencement date, the Adjudicating Authority herein declares moratorium for prohibiting all of the following viz;-

- (i) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any Court of Law, Tribunal, Arbitration Panel or other Authority.
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor, any of its assets or any legal right or beneficial interest therein;
 - (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(54 of 2002);
 - (iv) the recovery of any property by an owner as lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (2) The supply of goods and essential services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub-section (1) shall, however, not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.
- (4) The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.


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19. This Adjudicating Authority hereby appoints Mr. Trupalkumar J. Patel having Registration No. IBBI/IPA-001/IP-P01186/2018-19/11907 to act as "Interim Insolvency Resolution Professional" under Section 13(1)(b) of the IB Code.
20. The petition stand disposed of accordingly with no order as to costs.
21. Communicate a copy of this order to the Petitioner, Respondent and to the Interim Insolvency Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority &
Member (Technical)


Manorama Kumari
Adjudicating Authority &
Member (Judicial)

SAP

